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In Re Application of
ZHANG et al.
Application No.: 10/507,033
PCT No.: PCT/EP03/00126
Int. Filing Date: 09 January 2003
Priority Date: 07 March 2002
Attorney Docket No.: 2565/123
For: METHOD FOR DETERMINING HEMATOCRIT
AND/OR BLOOD VOLUME

DECISION

This application is before the Office PCT Legal Administration for consideration of issues arising under 35 U.S.C. 371(c).

On 09 January 2003, applicant filed international application No. PCT/EP03/00126 which claimed a priority date of 07 March 2002 and which designated the United States. Thereafter, on 07 September 2004, before the expiration of the thirty month period, applicant filed, *inter alia*, a transmittal letter for entry into the national stage and the basic national stage filing fee. Applicant also filed a declaration, executed under PCT Rule 4.17 (in the German language).

A Notification of Missing Requirements (Form PCT/DO/EO/905) was issued on 11 April 2005 indicating that an English translation of the claims was required. On 26 April 2005, applicant submitted an English translation of claims 1-12. An English translation of claims 13-16 was submitted with the national stage entry.

On 31 May 2005, a Notification of Acceptance Under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) was mailed indicating a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 26 April 2005.

DISCUSSION

Applicant submitted a copy of the originally filed Request with the national stage entry. That Request included a declaration under PCT Rule 4.17. The declaration was not signed.

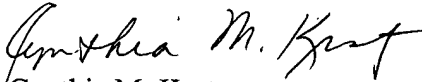
A review of the application in the World Intellectual Property Organization's (WIPO) website file confirms that the executed declaration, in accord with PCT Rule 4.17, was not submitted with the Request on 9 January 2003 but was submitted on a later date. The declaration was executed by the inventors, dated 17 January 2003. However this executed declaration does not identify the international application. The PCT international application number was applied to top right corner of the declaration by the International Bureau after the declaration's execution. Thus, the declaration is not in compliance with 37 CFR 1.497(a) & (b) as it did not identify the application at the time of execution. The declaration does not identify the application to which is directed and thus, is not in compliance with 37 CFR 1.497(a) & (b).

The Notification of Acceptance mailed on 31 May 2005 was erroneously issued and is hereby VACATED. A Notification of Missing Requirements will be issued indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) & (b), and the surcharge for filing the oath or declaration after the thirty month period is required.

CONCLUSION

For the reasons set forth above, the Notification of Acceptance is VACATED.

The application will be forwarded to the United States Designated/Elected Office for further processing including issuance of a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) & (b), and the surcharge for filing the oath or declaration after the thirty month period is required.



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